United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:13-15207 Mirna Saldana **Chapter 7**

#1.00 HearingRE: [22] Motion to Reopen Chapter 7 Case . LLC (Herzlich, Allan)

Docket 22

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Second Motion to Reopen is **GRANTED**.

Pleadings Filed and Reviewed:
1) Notice of Motion for Order Reopening Case to Allow Creditor to File an Adversary Complaint to Determine and Declare that There is No Stay of Enforcement (or, Alternatively, to Vacate Stay of Enforcement) as to Debtor's Former, Current, and Future Community Property Interests [Doc. No. 22] (the "Second Motion to Reopen")
2) No opposition to the Motion to Reopen is on file

I. Facts and Summary of Pleadings

On February 28, 2013 (the "Petition Date"), Mirna Saldana (the "Debtor") filed a voluntary Chapter 7 petition (the "Petition"). The Debtor received a discharge on June 3, 2013. Doc. No. 14. On Schedule H, the Debtor checked the box indicating that she had no co-debtors. On Schedule I, the Debtor stated that her marital status was "separated."

Puttnam Leasing Company I, LLC ("Puttnam") holds a judgment (the "Judgment") against the Debtor, Jose Melendez ("Melendez"), and American Connections, Inc. On September 25, 2020, Puttnam levied on a bank account in Melendez's name only. Melendez asserted that the funds were not subject to levy because he remained married to the Debtor, and the funds were therefore protected by the Debtor's community property discharge.

On March 17, 2022, Puttnam filed a motion to reopen the Debtor's case (the "First

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CONT... Mirna Saldana **Chapter 7**

Motion to Reopen"), to enable Puttnam to file a complaint revoking the Debtor's discharge. On May 3, 2022, the Court denied the First Motion to Reopen without prejudice. Doc. No. 20.

Puttnam has filed a renewed motion to reopen the Debtor's case (the "Second Motion to Reopen"), to enable Puttnam to file a complaint seeking a declaration that Puttnam is authorized to enforce the Judgment against the Debtor's former, current, and future community property interests (the "Proposed Complaint"). No opposition to the Second Motion to Reopen is on file.

II. Findings of Fact and Conclusions of Law

Section 350(b) provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." It is generally not appropriate for the Court "to combine consideration of the motion to reopen with consideration of arguably dispositive issues in the underlying litigation." *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 916 (B.A.P. 9th Cir. 1999).

The Court finds it appropriate to grant the Second Motion to Reopen to enable Puttnam to file the Proposed Complaint. The granting of the Second Motion to Reopen does not constitute a finding by the Court as to whether Puttnam is entitled to the relief sought in the Proposed Complaint.

The Court will prepare and enter an order granting the Second Motion to Reopen.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Mirna Saldana — Represented By
D Justin Harelik

Trustee(s):

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM

CONT... Mirna Saldana **Chapter 7**

Elissa Miller (TR) Pro Se

10:00 AM
2:20-19941 Excelencia Academy, Inc. **Chapter 7**

#2.00 APPLICANT: LEVENE NEALE BENDER YOO & BRILL, Attorney for Trustee

Hearing re [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

No objection has been filed in response to the Trustee's Final Report. This court approves the fees and expenses, and payment, as requested by the Trustee, as follows:

Total Trustee's Fees: $4,921.56[*see* Doc. No. 46]

Total Trustee's Expenses: $43.22 [*see id.*]

Attorney for Trustee Fees: Levene, Neale, Bender, Yoo & Brill: $10,271.00 [Doc. No. 43]

Attorney for Trustee Expenses: Levene, Neale, Bender, Yoo & Brill: $138.10 [*see id.*]

Accountant for Trustee Fees: Menchaca & Company, LLP: $ 5,059.00 [Doc. No. 44]

Accountant for Trustee Expenses: Menchaca & Company, LLP: $ 22.55 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should

10:00 AM

CONT... Excelencia Academy, Inc. **Chapter 7**

an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

The chapter 7 trustee shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

Excelencia Academy, Inc. — Represented By Jamie P Dreher

Trustee(s):

Timothy Yoo (TR) — Represented By Anthony A. Friedman

10:00 AM
2:20-19941 Excelencia Academy, Inc. **Chapter 7**

#3.00 APPLICANT: TIMOTHY J. YOO, CHAPTER 7 TRUSTEE,

Hearing re [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/6/2022

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Excelencia Academy, Inc. — Represented By Jamie P Dreher

Trustee(s):

Timothy Yoo (TR) — Represented By Anthony A. Friedman

10:00 AM
2:20-19941 Excelencia Academy, Inc. **Chapter 7**

#4.00 APPLICANT: MENCHACA & COMPANY, LLP, Accountant for Trustee

Hearing re [47] Trustee's Final Report and Applications for Compensation

Docket 0

Tentative Ruling:

6/6/2022

See Cal. No. 2, above, incorporated in full by reference.

Party Information

Debtor(s):

Excelencia Academy, Inc. — Represented By Jamie P Dreher

Trustee(s):

Timothy Yoo (TR) — Represented By Anthony A. Friedman

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:20-14485 Michael Stuart Brown **Chapter 11**

#5.00 HearingRE: [202] Application for Compensation for Michael F Chekian, Debtor's Attorney, Period: 7/16/2021 to 3/29/2022, Fee: $9,050.00, Expenses: $314.00.

Docket 202

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below:

Fees: $9,050.00 [Doc. No. 202]

Expenses: $314.00 [*see id.*]

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Applicant shall submit a conforming order within seven days of the hearing.

Party Information

Debtor(s):

Michael Stuart Brown Represented By

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
CONT... Michael Stuart Brown **Chapter 11**

Michael F Chekian

Trustee(s):

Gregory Kent Jones (TR) Represented By
Stradling Yocca Carlson & Rauth

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:20-16475 Neumedicines, Inc. **Chapter 11**

#6.00 HearingRE: [299] Application for Compensation for Menchaca & Company LLP, Financial Advisor, Period: 6/3/2021 to 4/30/2022, Fee: $52,000.00, Expenses: $0.

Docket 299

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below on an interim basis:

Fees: $52,000.00

Expenses: $0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Neumedicines, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM

CONT... Neumedicines, Inc. **Chapter 11**

James R Selth

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:20-16475 Neumedicines, Inc. **Chapter 11**

#7.00 HearingRE: [301] Application for Compensation Third Interim Application for Allowance of Fees and Reimbursement of Expenses of Weintraub & Selth, APC, General Bankruptcy Counsel to the Debtor and Debtor in Possession, for the Period from September 1, 2021 Through April 30, 2022; Declarations of James R. Selth and Timothy K. Gallaher in Support Thereof for Weintraub & Selth APC, Debtor's Attorney, Period: 9/1/2021 to 4/30/2022, Fee: $178,979.18, Expenses: $951.57.

Docket 301

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

Having reviewed the third interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below on an interim basis:

Fees: $178,979.18

Expenses: $951.57

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM

CONT... Neumedicines, Inc. **Chapter 11**

Debtor(s):

Neumedicines, Inc.

Represented By
Crystle Jane Lindsey
Daniel J Weintraub
James R Selth

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:22-10132 Phenomenon Marketing & Entertainment, LLC **Chapter 11**

#8.00 Hearing
RE: [162] Application for Compensation for Accountant Jennifer M. Liu, Period: 1/27/2022 to 3/29/2022, Fee: $6,572.50, Expenses: $.

Docket 162

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below on an interim basis:

Fees: $6,572.50

Expenses: $0.00

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Phenomenon Marketing & — Represented By
Michael Jay Berger

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM

CONT... Phenomenon Marketing & Entertainment, LLC **Chapter 11**

Trustee(s):

Susan K Seflin (TR) Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:22-10132 Phenomenon Marketing & Entertainment, LLC **Chapter 11**

#9.00 Hearing
RE: [113] Motion RE: Objection to Claim Number 10 by Claimant Krishnan Menon.

FR. 5-17-22

Docket 113

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Debtors' objections to the Menon Claims are **OVERRULED WITHOUT PREJUDICE**.

Pleadings Filed and Reviewed:
1) Debtor's Objection to Krishnan Menon's Proof of Claim No. 10 [Phenomenon Doc. No. 113] **[Note 1]**
   a) Notice of Claim Objection [Phenomenon Doc. No. 114]
   b) Order Continuing Hearing on Debtor's Objection to Claim of Krishnan Menon from May 17, 2022 at 10:00 a.m. to June 7, 2022 at 10:00 a.m., to Take Place Concurrently with Related Hearing [Phenomenon Doc. No. 173]
2) Debtor's Objection to Krishnan Menon's Proof of Claim No. 4 [Phe.no Doc. No. 55]
   a) Notice of Claim Objection [Phe.no Doc. No. 56]

I. Facts and Summary of Pleadings

On January 10, 2022, Phenomenon Marketing & Entertainment, LLC ("Phenomenon") filed a voluntary Chapter 11 petition and elected treatment under Subchapter V. Phenomenon is a marketing agency. The filing of the petition was precipitated by a decline in the Phenomenon's net revenue from approximately $22

10:00 AM

CONT... Phenomenon Marketing & Entertainment, LLC **Chapter 11**

million in 2019 to approximately $13 million in 2020. On April 28, 2022, the Court entered a Memorandum of Decision and accompanying order sustaining the objection of 5900 Wilshire LLC to Phenomenon's eligibility to proceed as a "small business debtor" under Subchapter V. Case No. Phenomenon Doc. Nos. 143–144. The Court found that Phenomenon was not eligible to proceed either as a Subchapter V debtor or as a small business debtor, and ordered that Phenomenon's case would proceed under the other applicable provisions of Chapter 11.

On February 9, 2022, Phe.no LLC ("Phe.no," and together with Phenomenon, the "Debtors") filed a voluntary Chapter 11 petition and elected treatment under Subchapter V. Phe.No holds a 100% interest in Phenomenon. Ranvir Gujral ("Gujral") signed the petitions of both Debtors.

In 2019, Krishnan Menon ("Menon") became the Chief Executive Officer of the Debtors. On July 19, 2019, Menon entered into an executive employment agreement (the "EEA") with Phe.No. The EEA provides that any disputes thereunder "shall be resolved solely and exclusively by final and binding arbitration …." EEA at ¶ 8.10 [Case No. 2:22-bk-10132-ER, Doc. No. 127, Ex. 2].

On March 11, 2021, Menon's employment with the Debtors was terminated. On July 20, 2021, Menon commenced an arbitration proceeding (the "Arbitration") against the Debtors and Gujral. The Arbitration is being conducted by the Hon. Jackson Lucky (the "Arbitrator"). Menon asserts claims against the Debtors for breach of the EEA, breach of the covenant of good faith and fair dealing, and failure to pay wages. Menon asserts claims against both Gujral and the Debtors for intentional infliction of emotional address for attempted extortion and defamation and slander *per se*. Menon seeks damages of no less than $4.8 million from the Debtors and from Gujral.

On February 10, 2022, Gujral filed a motion in the Arbitration requesting that the Arbitration be stayed until the bankruptcy stay was lifted as to the Debtors. The arbitrator has agreed to stay the Arbitration until the stay is lifted or plans of reorganization are approved.

On May 16, 2022, upon the motion of Menon, the Court lifted the automatic stay in Phenomenon's case to permit Menon to proceed to final judgment in the Arbitration. Phenomenon Doc. No. 174. On that same date, upon the motion of Menon, the Court lifted the automatic stay in Phe.no's case to permit Menon to proceed to final judgment in the Arbitration. Phe.no Doc. No. 77.

Menon has filed general unsecured Proofs of Claim against both Debtors (the "Claims"). Each Claim is in the amount of $5.58 million, and is based upon the causes

of action that Menon asserts in the Arbitration. Both Debtors have filed substantially identical objections to the Claims (the "Claim Objections"). The Debtors argue that the Claims are "not liquidated and must be adjudicated in the currently pending Arbitration in order to establish any purported amount of the Claim[s]," and contend that the Court should "disallow the [Claims] until Menon can liquidate [the Claims] in JAMS Arbitration." Phenomenon Doc. No. 113 at 3–4; Phe.no Doc. No. 55 at 3–4.

Menon has not filed an opposition to the Claim Objections.

II. Findings of Fact and Conclusions of Law

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

On May 20, 2022, the Court entered orders overruling without prejudice Phenomenon's objections to the claims asserted by Cappello Global LLC ("Cappello") and Niagara International Capital Limited ("Niagara"). Phenomenon Doc. Nos. 179–80. The Court stated that it was not yet in a position to determine the amounts of the Cappello and Niagara Claims because an action before the State Court to determine Phenomenon's liability to Cappello and Niagara had not yet concluded.

The Court finds it appropriate to adopt the same approach to the Debtors'

10:00 AM

CONT... Phenomenon Marketing & Entertainment, LLC **Chapter 11**

objections to the Menon Claims. The sole basis of the Debtors' Claim Objections is that the Menon Claims have not yet been liquidated. The Court declines to disallow the Menon Claims only because the Arbitration has yet to be concluded. However, the Court is not in a position to determine the amount of the Menon Claims given that the Arbitration remains pending.

III. Conclusion

Based upon the foregoing, the Claim Objections are **OVERRULED WITHOUT PREJUDICE**. The Court is not in a position to determine the amount of the Menon Claims because the Arbitration has not yet concluded.

The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

"Phenomenon Doc. No." references are to Case No. 2:22-bk-10132-ER and "Phe.no Doc. No." references are to Case No. 2:22-bk-10715-ER.

Party Information

Debtor(s):

Phenomenon Marketing &	Represented By Michael Jay Berger

Trustee(s):

Susan K Seflin (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM

2:22-10132 Phenomenon Marketing & Entertainment, LLC **Chapter 11**

#10.00 HearingRE: [121] Application for Compensation for Michael Jay Berger, Debtor's Attorney, Period: 1/11/2022 to 3/29/2022, Fee: $53,084.50, Expenses: $623.59.

Docket 121

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

Having reviewed the first interim application for fees and expenses filed by this applicant, the court approves the application and awards the fees and expenses set forth below on an interim basis:

Fees: $53,084.50

Expenses: $623.59

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Landon Foody at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Phenomenon Marketing & — Represented By
Michael Jay Berger

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM

CONT... Phenomenon Marketing & Entertainment, LLC **Chapter 11**

Trustee(s):

Susan K Seflin (TR) Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:22-10715 Phe.no LLC **Chapter 11**

#11.00 HearingRE: [51] Motion RE: Objection to Claim Number 2 by Claimant Cappello Global, LLC. Debtor's Objection to Cappello Global LLC's Proof of Claim No.:2; Memorandum of Points and Authorities in Support Thereof; Declaration of Ranvir Gujral in Support Thereof

Docket 51

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, Phe.no's objections to the claims of Cappello Global LLC and Niagara International Capital Limited are both **OVERRULED WITHOUT PREJUDICE**.

Pleadings Filed and Reviewed:

1) Debtor's Objection to Niagara International Capital Limited's Proof of Claim No. 3 [Phe.no Doc. No. 53] **[Note 1]**
   a) Notice of Claim Objection [Phe.no Doc. No. 54]
2) Debtor's Objection to Cappello Global LLC's Proof of Claim No. 2 [Phe.no Doc. No. 51]
   a) Notice of Claim Objection [Phe.no Doc. No. 52]
3) Cappello Global, LLC's and Niagara International Capital Limited's Joint Opposition to Debtor's Objection to Proof of Claim Numbers 2 and 3 [Phe.no Doc. No. 63]
4) Debtor's Reply to Cappello Global, LLC's and Niagara International Capital Limited's Joint Opposition to Debtor's Objection to Proof of Claim Numbers 2 and 3 [Phe.no Doc. No. 79]

I. Facts and Summary of Pleadings

A. Background

10:00 AM

CONT... Phe.no LLC **Chapter 11**

On January 10, 2022, Phenomenon Marketing & Entertainment, LLC ("Phenomenon") filed a voluntary Chapter 11 petition and elected treatment under Subchapter V. Phenomenon is a marketing agency. The filing of the petition was precipitated by a decline in the Phenomenon's net revenue from approximately $22 million in 2019 to approximately $13 million in 2020. On April 28, 2022, the Court entered a Memorandum of Decision and accompanying order sustaining the objection of 5900 Wilshire LLC to Phenomenon's eligibility to proceed as a "small business debtor" under Subchapter V. Case No. Phenomenon Doc. Nos. 143–144. The Court found that Phenomenon was not eligible to proceed either as a Subchapter V debtor or as a small business debtor, and ordered that Phenomenon's case would proceed under the other applicable provisions of Chapter 11.

On February 9, 2022, Phe.no LLC ("Phe.no," and together with Phenomenon, the "Debtors") filed a voluntary Chapter 11 petition and elected treatment under Subchapter V. Phe.No holds a 100% interest in Phenomenon. Ranvir Gujral ("Gujral") signed the petitions of both Debtors.

On April 29, 2020, Phenomenon filed a complaint (the "State Court Complaint") against Cappello Global LLC ("Cappello"), Niagara International Capital Limited ("Niagara"), and various other defendants in the Los Angeles County Superior Court (the "State Court"). The State Court Complaint pertains to an agreement between Cappello and Niagara, on the one hand, and Phenomenon, on the other hand, executed on January 3, 2017 (the "Agreement"), under which Cappello and Niagara were to provide Phenomenon financial advisory services, including assisting Phenomenon in locating investors to purchase or invest in the company. Phenomenon alleges that Cappello and Niagara failed to diligently perform under the Agreement, and asserts claims for intentional misrepresentation, fraudulent inducement, fraudulent concealment, breach of contract, and unfair business practices.

On June 4, 2020, Cappello and other parties affiliated with Cappello (the "Cappello Parties") filed a cross-complaint (the "Cappello Cross-Complaint") against Phenomenon and other cross-defendants affiliated with Phenomenon. The Cappello Parties allege that Phenomenon violated the Agreement by secretly consummating a deal without disclosing it to Cappello, in an attempt to avoid paying Cappello the success fee that it was owed under the Agreement. In February 2021, the Cappello Parties named Phe.no as an additional cross-defendant.

On August 27, 2020, Phenomenon and other parties affiliated with Phenomenon filed their own cross-complaint against the Cappello Parties (the "Phenomenon Cross-Complaint"). The Phenomenon Cross-Complaint asserts claims for intentional

misrepresentation, negligent misrepresentation, and promissory estoppel.

On March 2, 2022, upon the motion of Cappello, the Court lifted the automatic stay in Phenomenon's case to permit Cappello to proceed to final judgment before the State Court. Phenomenon Doc. No. 70. On May 9, 2022, upon the motion of Cappello, the Court lifted the automatic stay in Phe.no's case to permit Cappello to proceed to final judgment before the State Court. Phe.no Doc. No. 70.

Cappello and Niagara International Capital Limited ("Niagara") have filed general unsecured claims against both Debtors (the claims filed by Cappello, the "Cappello Claims," and the claims filed by Niagara, the "Niagara Claims"). The Cappello Claim filed in Phenomenon's case is identical to the Cappello Claim filed in Phe.no's case; likewise, the Niagara Claim filed in Phenomenon's case is identical to the Niagara Claim filed in Phe.no's case.

Cappello asserts general unsecured claims against both Debtors based upon the Debtors' alleged breaches of the Agreement; each of the Cappello Claims is in the amount of $1.5 million. Similarly, Niagara asserts general unsecured claims against both Debtors, again based upon the Debtors' alleged breaches of the Agreement; each of the Niagara Claims is also in the amount of $1.5 million.

On May 20, 2022, the Court overruled without prejudice Phenomenon's objections to the Cappello Claim and the Niagara Claim that had been filed in Phenomenon's case. Phenomenon Doc. Nos. 175–76 and 179–80.

B. Summary of Papers Filed in Connection with the Phe.no's Objections to the Cappello Claim and Niagara Claim

Phe.no objects to the Cappello Claim and the Niagara Claim, making the same arguments that Phenomenon made in Phenomenon's substantially-identical objections to Cappello and Niagara's claims against Phenomenon's estate. Phe.no asserts that the Cappello Claim and the Niagara Claim are duplicative because they are both based upon the same Agreement, and are for the same amount. Phe.no's position is that in order to prevent Cappello and Niagara from obtaining a double recovery, Cappello and Niagara are entitled to assert only a single claim.

Cappello and Niagara "agree that they are not each entitled to the fees owed by [Phe.no] but rather are jointly owed those fees as parties to the Agreement with [Phe.no]." Phe.no Doc. No. 63 at 3.

II. Findings of Fact and Conclusions of Law

As noted, the claims filed by Cappello and Niagara in Phe.no's case are identical

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CONT... Phe.no LLC **Chapter 11**

to the claims that these entities filed in Phenomenon's case, and Phe.no makes the same arguments in objecting to the claims that Phenomenon made. The Court will overrule Phe.no's objections to the Cappello and Niagara Claims without prejudice, for the same reasons that the Court overruled the substantially-identical objections that Phenomenon asserted. (The Court notes that Phe.no has requested that the Court adopt the ruling made in Phenomenon's case in this case.)

Under Bankruptcy Rule 3001(f), a proof of claim executed and filed in accordance with the Bankruptcy Rules constitutes *prima facie* evidence of the validity and amount of the claim. To overcome the presumption of validity created by a timely-filed proof of claim, an objecting party must do one of the following: (1) object based on legal grounds and provide a memorandum of points and authorities setting forth the legal basis for the objection; or (2) object based on a factual ground and provide sufficient evidence (usually in the form of declarations under penalty of perjury) to create triable issues of fact. *Durkin v. Benedor Corp. (In re G.I. Indus., Inc.)*, 204 F.3d 1276, 1280 (9th Cir. BAP 2000); *United States v. Offord Finance, Inc. (In re Medina)*, 205 B.R. 216, 222 (9th Cir. BAP 1996); *Hemingway Transport, Inc. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 925 (1st Cir. 1993). Upon objection, a proof of claim provides "some evidence as to its validity and amount" and is "strong enough to carry over a mere formal objection without more." *See Lundell v. Anchor Constr. Spec., Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (citing *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991)). An objecting party bears the burden and must "show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Holm*, 931 F.2d at 623. When the objector has shown enough evidence to negate one or more facts in the proof of claim, the burden shifts back to the claimant to prove the validity of the claim by a preponderance of evidence. *See Lundell*, 223 F.3d at 1039 (citation omitted).

Under the Bankruptcy Code, a "claim" is a "right to payment," § 101(5), and a "creditor" is "an entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor," § 101(10). Both Cappello and Niagara are signatories to the Agreement. Both entities have alleged that they are entitled to payment from Phe.no on account of Phe.no's alleged breach of that Agreement. Accordingly, both Cappello and Niagara are creditors holding claims against Phe.no.

It is true that Cappello and Niagara are entitled to only a single satisfaction in connection with the Agreement—that is, in the event that Phe.no is found to be liable, Phe.no would not be required to pay the $1 million success fee allegedly owed under

the agreement to both Cappello and Niagara. However, that does not prevent Cappello and Niagara from both filing Proofs of Claim. It means only that, between them, the total amount paid to Cappello and Niagara on account of their claims may not exceed whatever is ultimately adjudged to be owed by Phe.no under the Agreement.

Cappello and Niagara assert that Phe.no is jointly and severally liable to them under the Agreement. As the Supreme Court has held, creditors may assert claims against a debtor in bankruptcy for the full amount of the debt, even if the debt has been partially satisfied by joint obligors. *See Reconstruction Fin. Corp. v. Denver & RGWR Co.*, 328 U.S. 495 (1946). The reasoning is that because creditors do not always recover 100 cents on the dollar, they are permitted to assert the full amount of the claim against each obligor, although recoveries may be limited to the actual amount due. The same principle applies where, as here, Phe.no is alleged to be jointly and several liable to two creditors. Each creditor is entitled to file a separate proof of claim, subject to the proviso that the total amount paid on account of both claims may not exceed the total amount ultimately determined to be owed under the Agreement.

III. Conclusion

Based upon the foregoing, the Claim Objections are **OVERRULED WITHOUT PREJUDICE**. The Court is not in a position to determine the amount of the Cappello and Niagara Claims because the State Court Action has not yet concluded.

The Court will prepare and enter appropriate orders.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1

"Phenomenon Doc. No." references are to Case No. 2:22-bk-10132-ER and "Phe.no Doc. No." references are to Case No. 2:22-bk-10715-ER.

Party Information

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
CONT... Phe.no LLC **Chapter 11**

Debtor(s):

Phe.no LLC — Represented By Michael Jay Berger

Trustee(s):

Susan K Seflin (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:22-10715 Phe.no LLC **Chapter 11**

#12.00 HearingRE: [53] Motion RE: Objection to Claim Number 3 by Claimant Niagara International Capital Limited. Debtor's Objection to Niagara International Capital Limited's Proof of Claim No.:3; Memorandum of Points and Authorities in Support Thereof; Declaration of Ranvir Gujral in Support Thereof

Docket 53

Tentative Ruling:

6/6/2022

See Cal. No. 11, above, incorporated in full by reference.

Party Information

Debtor(s):

Phe.no LLC — Represented By Michael Jay Berger

Trustee(s):

Susan K Seflin (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

10:00 AM
2:22-10715 Phe.no LLC **Chapter 11**

#13.00 Hearing
RE: [55] Motion RE: Objection to Claim Number 4 by Claimant Krichnam Menon. Debtor's Objection to Krishnan Menon's Proof of Claim No.:4; Memorandum of Points and Authorities in Support Thereof; Declaration of Ranvir Gujral in Support Thereof

Docket 55

Tentative Ruling:

6/6/2022

See Cal. No. 9, above, incorporated in full by reference.

Party Information

Debtor(s):

Phe.no LLC — Represented By
Michael Jay Berger

Trustee(s):

Susan K Seflin (TR) — Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM

2:21-19480 Howard Chorng Jeng Wu **Chapter 7**

Adv#: 2:22-01071 Chiang et al v. Wu

#100.00 Hearing

RE: [9] Motion to Dismiss Adversary Proceeding Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can be Granted with Notice and Proof of Service Thereof

Docket 9

***** VACATED *** REASON: PER ORDER ENTERED 6-3-22**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Plaintiff(s):

Michael Chung-Hou Chiang	Represented By Norma V Garcia
Agnes Shene Hwa Chin	Represented By Norma V Garcia

Trustee(s):

Heide Kurtz (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM

2:21-19480 Howard Chorng Jeng Wu **Chapter 7**

Adv#: 2:22-01072 Chen v. Wu

#101.00 Hearing

RE: [9] Motion to Dismiss Adversary Proceeding Under Rule 7012 for Failure to State a Claim Upon Which Relief Can be Granted with Notice and Proof of Service Thereof

Docket 9

***** VACATED *** REASON: PER ORDER ENTERED 6-3-22**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Plaintiff(s):

Li Mei Chen	Represented By Norma V Garcia

Trustee(s):

Heide Kurtz (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM
2:21-19480 Howard Chorng Jeng Wu **Chapter 7**
Adv#: 2:22-01073 WBC Special Assets, LLC et al v. Wu

#102.00 HearingRE: [18] Motion to Dismiss Adversary Proceeding Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief can be Granted with Notice and Proof of Service Thereof

Docket 18

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Motion to Dismiss is **DENIED**. Defendant shall file an Answer to the Complaint by no later than **June 21, 2022**.

Pleadings Filed and Reviewed:
1) First Amended Complaint for to Determine Debt Non-Dischargeable Pursuant to 11 U.S.C. § 523 [Adv. Doc. No. 9] (the "Complaint")
2) Notice of Motion and Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 18] (the "Motion to Dismiss")
3) Opposition of Plaintiffs to Defendant's Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 21] (the "Opposition")
4) Reply to Plaintiffs' Opposition to Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 22] (the "Reply")

I. Facts and Summary of Pleadings

A. Procedural Background

On December 29, 2021 (the "Petition Date"), Howard Wu ("Defendant") filed a voluntary Chapter 7 petition. On April 14, 2022, WBC Special Assets, LLC ("WBC"),

Capital Lending Resources, Inc. ("CLR"), Craig Quinn, as Trustee of the Craig & Colleen Quinn Family Trust dated September 2000 (the "Quinn Trust"), and Capital Lending Resources, Inc. Profit Sharing Plan ("CLR PSP," and together with WBC, CLR, and the Quinn Trust, the "Plaintiffs"), filed a *First Amended Complaint to Determine Debt Non-Dischargeable* [Adv. Doc. No. 9] (the "Complaint") against Defendant. Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Plaintiffs oppose the Motion to Dismiss.

B. Summary of the Complaint

1. Summary of the Complaint's Allegations

The allegations of the Complaint may be summarized as follows:

Defendant and his business partner, Taylor Woods ("Woods"), owned and controlled Urban Commons, LLC ("Urban Commons") and its subsidiary limited liability companies. *Id.* at ¶ 11. Urban Commons and its subsidiaries invested in hotel real estate throughout the United States. *Id.* Defendant and Woods were the managers of Eagle Hospitality Trust ("EHT"). *Id.* Defendant and Woods wanted to list EHT on the Singapore Exchange. *Id.* at ¶ 12.

a. The REIT Loan

In May 2019, Woods, with the consent of Defendant, approached Edward R. Marek ("Marek"), the principal of WBC's predecessor-in-interest, to obtain additional funding for EHT. *Id.* at ¶ 13. (WBC and its predecessor-in-interest shall hereinafter collectively be referred to as "WBC.") In May 2019, following multiple calls between Woods and Marek, WBC and WBC's broker CLR agreed to lend $7.5 million to capitalize a real-estate investment trust that was a subsidiary of EHT (the "REIT Loan"). *Id.* WBC and CLR agreed to extend credit only on the condition that Defendant and Woods personally guaranty the loan, as well as provide additional security by (1) pledging and delivering EHT shares and (2) pledging a senior interest in Urban Commons Harvard, LLC ("UC Harvard") and Urban Commons Gramercy, LLC ("UC Gramercy"). *Id.* at ¶ 14.

The REIT Loan closed on May 23, 2019. *Id.* at ¶ 16. Concurrently with the closing of the REIT Loan, Defendant executed a guaranty for "the full repayment of the [REIT] Loan" (the "Guaranty"). *Id.* at ¶ 12. At the time of the execution of the REIT Loan and the Guaranty, Defendant and Woods were aware that EHT was underfunded, and Defendant and Woods had already been reneging on financial

payments due on behalf of the hotels that were part of EHT. *Id.* at ¶ 15. Defendant failed to disclose either of these facts to WBC and CLR. *Id.* Had WBC and CLR been aware of these facts, they would not have agreed to the REIT Loan. *Id.* In addition, Woods, with the consent of Defendant, represented to Marek in May 2019 that there were sufficient investment commitments to capitalize EHT. *Id.* at ¶ 13.

Defendant misrepresented the security interest provided in connection with the REIT Loan. In a security agreement pledging a senior interest in UC Harvard and UC Gramercy to WBC and CLR, Defendant and Woods represented that "no lien exists or will exist upon" the pledged collateral. *Id.* at ¶ 20. This representation was false. At the time of the execution of the security agreement, UC Harvard and UC Gramercy were already encumbered by liens senior to the liens granted to WBC and CLR. *Id.* at ¶ 36. Defendant reaffirmed this misrepresentation when he consented to a modification of the loan documents. *Id.* at ¶ 32.

Defendant was also aware that Urban Commons would not be able to meet its obligation under the REIT Loan to pledge and deliver the EHT Shares, because Defendant knew that EHT was underfunded. *Id.* at ¶¶ 19 and 31.

The REIT Loan has not been repaid. *Id.* at ¶ 40.

b. The Wagner Loan

On February 14, 2020, WBC and CLR loaned Urban Commons $2.5 million for the purpose of paying for certain costs and expenses of the Wagner Hotel (the "Wagner Loan"). *Id.* at ¶ 45. Defendant personally guaranteed the Wagner Loan. *Id.* at ¶ 52.

To induce WBC and CLR to extend the Wagner Loan, Woods, with the consent of Defendant, made multiple misrepresentations to Marek and William McBride ("McBride"), who were both representatives of WBC. *Id.* at ¶ 41. These misrepresentations included the following: (1) Woods and Defendant had sufficient investment commitments to capitalize EHT and comply with all applicable laws; and (2) Urban Commons had sufficient investment commitments to timely repay the Wagner Loan. *Id.* At the time Woods made these misrepresentations, Defendant was aware that they were false. *Id.* at ¶ 42. Specifically, Defendant knew that (1) Urban Commons had failed to pay rent to EHT as master lessee of its various hotel properties; that (2) Urban Commons had defaulted on other obligations as master lessee; that (3) EHT was underfunded and unable to meet its financial obligations; and that (4) EHT had not received any rent payments since January 2020. *Id.* at ¶¶ 41 and 58.

In addition, Defendant misrepresented, both in the loan documents and through his personal guaranty, the nature of the security interest that WBC would receive in connection with the Wagner Loan. *Id.* at ¶ 50. Defendant and Woods agreed to grant WBC a first priority security interest in Urban Commons' membership interest in another entity, Urban Commons Battery Park (the "UCBP Interest"). *Id.* at ¶ 50. Defendant and Woods represented that the UCBP Interest would not be pledged as collateral to any other entity. *Id.* Defendant knew that this representation was false, because at the same time that the Wagner Loan was being finalized, Defendant and Woods were negotiating an additional loan from ERJMJ pursuant to which they conveyed the UCBP Interest to ERJMJ. *Id.* at ¶¶ 62–67. Had WBC and CLR been aware of the falsity of the representations, they would not have entered into the Wagner Loan. *Id.* at ¶ 44.

On July 2020, Defendant intentionally attempted to undermine WBC's interest in the UCBP Interest by requesting that WBC remove the financing statement securing the UCBP Interest. *Id.* at ¶ 69. Defendant intentionally concealed and omitted that he was making the request so that ERJMJ would have priority over WBC. *Id.*

The Wagner Loan has not been repaid. *Id.* at ¶ 60.

c. The CLR PSP Loan and the Quinn Family Trust Note and Guaranty

On January 9, 2020, CLR PSP agreed to loan $300,000 (the "CLR PSP Loan") to Urban Commons 6th Ave Seattle, LLC ("UC Seattle"). *Id.*at ¶¶ 77–79. Defendant personally guaranteed the CLR PSP Loan. *Id.* at ¶ 80. Also on January 9, 2020, the Quinn Trust agreed to loan $200,000 (the "Quinn Trust Loan") to UC Seattle. *Id.* at ¶ 87. Defendant personally guaranteed the Quinn Trust Loan. *Id.* at ¶ 89. The purpose of the CLR PSP Loan and the Quinn Trust Loan was to allow Urban Commons to purchase the downtown Hilton Seattle, located at 1301 6th Avenue (the "Hilton Seattle"). *Id.* at ¶ 70.

Between December 2019 and January 9, 2020, Defendant and Woods had multiple phone conversations with representatives of CLR PSP and the Quinn Trust. During these calls, Defendant falsely stated that Defendant and Woods had sufficient investment commitments to complete the purchase of the Hilton Seattle, but were temporarily in need of cash for a deposit towards the purchase of the hotel. *Id.* at ¶ 71. Defendant also intentionally failed to disclose that EHT was underfunded and that Defendant and Woods were being investigated for securities fraud in Singapore based on their management of EHT. *Id.* at ¶ 73. Had CLR PSP and the Quinn Trust known that Defendant's representations were false and that Defendant had intentionally failed

to disclose material information, they would not have entered into the loan agreements. *Id.* at ¶¶ 103 and 107.

Urban Commons never purchased the Hilton Seattle. *Id.* at ¶ 75. The funds obtained from CLR PSP and the Quinn Family Trust were misappropriated for other uses and were never returned. *Id.* at ¶ 3.

2. Summary of the Complaint's Claims for Relief

Based upon the foregoing allegations, the Plaintiffs seek a determination that the indebtedness at issue is nondischargeable under § 523(a)(2)(A) and (a)(6).

C. Summary of Papers Filed in Connection with the Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant argues that the Complaint fails to state a claim because it does not allege that Plaintiffs loaned the funds at issue to Defendant personally, and because it alleges that Woods, as opposed to Defendant, made certain of the representations at issue. Plaintiffs argue that it is irrelevant that the funds were not loaned to Defendant personally in view of the Guaranty, and that the representations made by Woods can be imputed to Defendant because Defendant and Woods were both engaged in a conspiracy to defraud Plaintiffs.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice…. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the

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mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' … it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation…. A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A. The Complaint States a Claim Under § 523(a)(2)(A)

Section 523(a)(2)(A) provides: "A discharge under section 727 … of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, a creditor must prove that:

1) the debtor made the representations;
2) that at the time he knew they were false;
3) that he made them with the intention and purpose of deceiving the creditor;
4) that the creditor relied on such representations; and
5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

In re Sabban, 600 F.3d 1219, 1222 (9th Cir. 2010).

Claims for relief under §523(a)(2)(A) involve allegations of fraud, and therefore must be pleaded with particularity in accordance with the requirements of Civil Rule 9(b). To satisfy Civil Rule 9(b), allegations of fraud must be "'specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.' A pleading 'is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.' The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity."

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Neubronner v. Milken, 6 F.3d 666, 671–72 (9th Cir. 1993); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged.").

Defendant argues that the Complaint fails to state a claim because it alleges that certain of the misrepresentations were made by Woods, not by Defendant. This argument fails for two reasons. First, the Complaint sufficiently alleges that Defendant intentionally conspired with Woods to defraud Plaintiffs, and that Defendant took various actions in furtherance of the conspiracy. *See, e.g.*, Complaint at ¶¶ 74–79 (alleging that Defendant and Woods created UC Seattle as a subsidiary of Urban Commons; that Defendant and Woods were managers of both entities; and that UC Seattle played a role in facilitating the fraudulent procurement of the CLR PSP Loan and the Quinn Trust Loan). Because Woods and Defendant were business partners who allegedly engaged in a conspiracy to defraud Plaintiffs, misrepresentations made by Woods in furtherance of that conspiracy can be imputed to Defendant for purposes of § 523(a)(2)(A). *See, e.g.*, *Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa)*, 287 B.R. 515, 525 (B.A.P. 9th Cir. 2002) ("a debt may be excepted from discharge either when (1) the debtor personally commits actual, positive fraud, or (2) the actual fraud of another is imputed to the debtor under partnership/agency principles"); *see also MacDonald v. Buck (In re Buck)*, 75 B.R. 417, 420–21 (Bankr. N.D. Cal. 1987) ("a debtor who has made no false representation may nevertheless be bound by the fraud of another if a debtor is a knowing and active participant in the scheme to defraud").

Second, and more significant, the allegations pertaining to the misrepresentations and material omissions committed by Defendant are sufficient to state a claim under § 523(a)(2)(A), independent of any misrepresentations made by Woods. The Complaint sufficiently alleges that Defendant knowingly made false representations in connection with the REIT Loan, the Wagner Loan, the CLR PSP Loan, and the Quinn Trust Loan; that these false representations were made to induce the lenders to extend credit; and that the lenders sustained damages as a result of their reliance upon these false representations.

As to the REIT Loan, the Complaint alleges that (1) Defendant induced WBC and CLR to extend credit by providing a personal guaranty and a pledge of security in the form of the EHT shares and senior interests in UC Harvard and UC Gramercy; that (2) the representations made in the loan documents were false because at the time Defendant pledged the senior interests in UC Harvard and UC Gramercy to WBC and CLR, UC Harvard and UC Gramercy were already encumbered by liens senior to the

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liens granted to WBC and CLR, and Defendant was aware of this fact; and that (3) WBC and CLR would not have executed the REIT Loan had they been aware that Defendant's representations were false.

As to the Wagner Loan, the Complaint alleges that (1) Defendant induced WBC and CLR to extend credit by providing a personal guaranty and granting WBC and CLR a security interest in the UCBP Interest; that (2) Defendant represented that the UCBP Interest would not be pledged as collateral to any other entity; and that (3) Defendant knew that this representation was false at the time he made it, because at the same time the Wagner Loan was being finalized, Defendant and Woods were negotiating an additional loan from ERJMJ pursuant to which they conveyed the UCBP Interest to ERJMJ.

As to the CLR PSP Loan and the Quinn Trust Loan, the Complaint alleges that (1) Defendant participated in negotiations with CLR PSP and the Quinn Trust which lead both entities to extend credit; that (2) during these negotiations Defendant failed to disclose key material facts, including that EHT was underfunded and that Defendant was being investigated for securities fraud in Singapore; and that (3) had CLR PSP and the Quinn Trust been aware of these facts, they would not have extended credit.

Throughout the Motion to Dismiss, Defendant asserts that the allegations set forth in the Complaint are untrue. *See, e.g.*, Motion to Dismiss at 3 ("Mr. Wu flatly denies that he defrauded anyone, including Plaintiffs herein, and flatly denies that he made any misrepresentations, material or otherwise 'about their deals,' as Plaintiffs put it"); *id.* at 6 ("Plaintiffs have proffered zero evidence that Mr. Wu was aware at the time that Eagle was underfunded, and flatly denies this unfounded allegation"); *id.* at 8 ("Mr. Wu denies making any misrepresentations to Plaintiffs, he never communicated in any manner with anyone associated with the lenders in this action prior to the loans being issued").

Defendant misapprehends the purpose of a Motion to Dismiss brought under Civil Rule 12(b)(6). The purpose of a Motion to Dismiss is to determine whether a complaint plausibly states a claim upon which relief can be granted. The Court does not make findings as to the truthfulness of the complaint's allegations when adjudicating a Civil Rule 12(b)(6) motion. Instead, the Court accepts the truthfulness of all well-pleaded facts set forth in the complaint.

Defendant will have the opportunity to contest the truthfulness of the Complaint's allegations at later stages in the litigation. At this juncture it is not appropriate for the Court to entertain Defendant's assertions that certain facts pleaded in the Complaint are not true.

Defendant next argues that the Complaint fails to state a claim because the funds at issue were not loaned to Defendant personally, but instead were only guaranteed by Defendant. This argument is without merit. Although Defendant was not the recipient of the loans, he is nevertheless liable for the indebtedness at issue by virtue of the personal guaranties that he executed.

B. The Complaint States a Claim Under § 523(a)(6)

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and "malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted).

In addition, the injury-producing conduct must be tortious in order to be excepted from discharge under §523(a)(6). *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). "[C]onduct is not tortious under § 523(a)(6) simply because injury is intended or 'substantially likely to occur,' but rather is only tortious if it constitutes a tort under state law." *Id.* at 1041.

The Complaint alleges that Defendant induced Plaintiffs to extend credit by making various misrepresentations and omitting material facts, and that Plaintiffs lost the funds that they invested. In view of the presumption that Defendant knows the natural consequences of his actions, these allegations are sufficient to show that Defendant either intended to harm Plaintiffs, or was substantially certain that Plaintiffs would be harmed by his actions. In addition, these allegations are sufficient to state a claim that Defendant intentionally engaged in an injury-causing wrongful act without just cause or excuse.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is **DENIED**. No later than **June 21, 2022**, Defendant shall file an Answer to the Complaint. The Court will prepare

11:00 AM

CONT... Howard Chorng Jeng Wu **Chapter 7**

and enter an order denying the Motion to Dismiss.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Plaintiff(s):

WBC Special Assets, LLC	Represented By Roye Zur
Capital Lending Resources, Inc.	Represented By Roye Zur
Craig Quinn	Represented By Roye Zur
Capital Lending Resources, Inc.	Represented By Roye Zur

Trustee(s):

Heide Kurtz (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM

2:21-19480 Howard Chorng Jeng Wu **Chapter 7**

Adv#: 2:22-01074 Mirae Asset Securities & Investments (USA), LLC v. Wu

#103.00 Hearing

RE: [9] Motion to Dismiss Adversary Proceeding Pursuant To FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can be Granted with Notice and Proof of Service Thereof

Docket 9

***** VACATED *** REASON: CONTINUED 6-22-22 AT 10:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Plaintiff(s):

Mirae Asset Securities &	Represented By Michael Garfinkel Eric D Goldberg James P Muenker Rachel Ehrlich Albanese

Trustee(s):

Heide Kurtz (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM
2:21-19480 Howard Chorng Jeng Wu **Chapter 7**
Adv#: 2:22-01076 Highgate Hotels, L.P. v. Wu

#104.00 HearingRE: [31] Motion to Dismiss Adversary Proceeding Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can be Granted with Notice and Proof of Service Thereof

Docket 31

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Motion to Dismiss is **DENIED**. Defendant shall file an Answer to the Complaint by no later than **June 21, 2022**.

Pleadings Filed and Reviewed:
1) Complaint to Determine Nondischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6) [Adv. Doc. No. 1] (the "Complaint")
2) Notice of Motion and Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 31] (the "Motion to Dismiss")
3) Plaintiff Highgate Hotels, L.P.'s Notice of Opposition and Opposition to Defendant Howard Chorng Jeng Wu's Motion to Dismiss Adversary Complaint [Adv. Doc. No. 35] (the "Opposition")
4) Reply of Howard Wu to Plaintiff's Opposition to Motion to Dismiss Adversary Complaint Pursuant to FRCP 12(b)(6) as Incorporated by Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 37] (the "Reply")

I. Facts and Summary of Pleadings

A. Procedural Background

On December 29, 2021 (the "Petition Date"), Howard Wu ("Defendant") filed a

voluntary Chapter 7 petition. On April 14, 2022, Highgate Hotels, L.P. ("Plaintiff") filed a *Complaint to Determine Nondischargeability of Debt Pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6)* [Adv. Doc. No. 1] (the "Complaint") against Defendant. Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Plaintiff opposes the Motion to Dismiss.

B. Summary of the Complaint

1. Summary of the Complaint's Allegations

The allegations of the Complaint may be summarized as follows:

Plaintiff is engaged in the business of managing and operating hotels across the United States. Complaint at ¶ 4. On January 29, 2018, Plaintiff entered into an Operating Agreement with the predecessor-in-interest of the owner of the Wagner Hotel (the "Owner"), under which Plaintiff agreed to "act as the exclusive operator and manager of the Wagner Hotel." *Id.* at ¶ 6. In the Operating Agreement, Owner agreed to be exclusively responsible for all the cost and liabilities relating to the Wagner Hotel. *Id.* at ¶ 8. The Operating Agreement provides that either party may terminate the Operating Agreement if the other fails to perform its obligations. *Id.* at ¶ 13.

Owner failed to fulfill its obligations under the Operating Agreement, which meant that Plaintiff had the right to terminate the Operating Agreement. *Id.* at ¶ 15. To induce Plaintiff to forebear from exercising its termination rights and to continue performing under the Operating Agreement, on January 5, 2021, Defendant executed a Guaranty Agreement on behalf of Owner in his capacity as Owner's Managing Member and in his individual capacity. *Id.* at ¶ 16. In the Guaranty Agreement, Defendant agreed to guaranty all of Owner's obligations under the Operating Agreement. *Id.* at ¶ 18.

Subsequent to the execution of the Guaranty Agreement, Owner continued to fail to fulfill its obligations under the Operating Agreement. *Id.* at ¶¶ 19–35. At all times, Defendant was aware of Owner's failure to comply with its obligations under the Operating Agreement and Defendant's corresponding responsibility to contribute the funds to cure Owner's defaults. *Id.* at ¶ 35. Defendant failed to fulfill any of his obligations under the Guaranty Agreement. *Id.* at ¶ 38.

At the time that Defendant executed the Guaranty Agreement, Defendant had no intention of fulfilling his obligations under that agreement. *Id.* at ¶ 45. To deceive Plaintiff and induce Plaintiff to continue performing under the Operating Agreement,

Defendant intentionally omitted the material fact that he had no intention of complying with his obligations under the Guaranty Agreement. *Id.* at ¶ 46. In executing the Guaranty Agreement and continuing to perform under the Operating Agreement, Plaintiff justifiably and reasonably relied on Defendant's representations that he intended to fully perform his obligations under the Guaranty Agreement. *Id.* at ¶ 47.

2. Summary of the Complaint's Claims for Relief

Based upon the foregoing allegations, the Plaintiff seeks a determination that the indebtedness at issue is nondischargeable under § 523(a)(2)(A) and (a)(6).

C. Summary of Papers Filed in Connection with the Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant argues that the Complaint's allegations of fraud are not pleaded with sufficient particularity. Plaintiff contends that the Complaint's allegations regarding Defendant's execution of the Guaranty Agreement support a reasonable inference that Defendant committed fraud because he executed the Guaranty Agreement to induce Plaintiff to continue operating the Wagner Hotel, even though Defendant never intended to perform under the Guaranty Agreement.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice…. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the

mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' … it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation…. A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A. The Complaint States a Claim Under § 523(a)(2)(A)

Section 523(a)(2)(A) provides: "A discharge under section 727 … of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, a creditor must prove that:

1) the debtor made the representations;
2) that at the time he knew they were false;
3) that he made them with the intention and purpose of deceiving the creditor;
4) that the creditor relied on such representations; and
5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

In re Sabban, 600 F.3d 1219, 1222 (9th Cir. 2010).

Claims for relief under §523(a)(2)(A) involve allegations of fraud, and therefore must be pleaded with particularity in accordance with the requirements of Civil Rule 9(b). To satisfy Civil Rule 9(b), allegations of fraud must be "'specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.' A pleading 'is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.' The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity."

Neubronner v. Milken, 6 F.3d 666, 671–72 (9th Cir. 1993); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged.").

Defendant argues that the Complaint fails to plead fraud with sufficient particularity, because Plaintiff "does not quote any statements or attach any communications from [Defendant] to back up its claim of fraudulent inducement," and because Plaintiff does not allege "that on a specific day, [Defendant] … by email, telephone call, or ZOOM meeting, made a specific representation to the Plaintiff." Adv. Doc. No. 31 at 8 and 9. Defendant's argument is without merit.

The Complaint's allegations of fraud are accompanied by "the who, what, when, where, and how of the misconduct charged." *Ciba-Geigy Corp. USA*, 317 F.3d at 1106. The Complaint alleges (1) who undertook the misconduct (Defendant); (2) what the misconduct was (Defendant knew that Plaintiff had the right to cease operating the Wagner Hotel because Owner had defaulted under the Operating Agreement; to prevent Plaintiff from walking away, Defendant executed the Guaranty Agreement, despite having no intention of performing his obligations thereunder); (3) when the misconduct occurred (Defendant executed the Guaranty Agreement on January 5, 2021, after Plaintiff's right to terminate the Operating Agreement had been triggered); (4) where the misconduct occurred (Defendant's execution of the Guaranty Agreement induced Plaintiff to continue operating the Wagner Hotel, located in New York, New York); and (5) how the misconduct was perpetrated (knowing that Plaintiff had the right to cease operating the Wagner Hotel, Defendant executed the Guaranty Agreement to induce Plaintiff to continue as the Hotel's operator).

The Complaint's allegations are sufficient to state a claim under § 523(a)(2)(A). The Complaint alleges that (1) by executing the Guaranty Agreement, Defendant represented to Plaintiff that if Owner failed to adequately fund the Wagner Hotel's operations, Defendant would make up for the funding shortfall; that (2) these representations were false in that Defendant never intended to perform under the Guaranty Agreement; that (3) Plaintiff relied upon the Guaranty Agreement when deciding not to exercise its right to terminate the Operating Agreement; that (4) had Plaintiff known that Defendant did not intend to perform under the Guaranty Agreement, it would have elected to terminate the Operating Agreement, rather than continuing to operate the Wagner Hotel; and that (5) Plaintiff sustained damages as a result of its decision not to terminate the Operating Agreement, because Plaintiff was required fund from its own pocket operating expenses that should have been provided by Defendant under the Guaranty Agreement.

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CONT... Howard Chorng Jeng Wu **Chapter 7**

Defendant argues that Plaintiff has failed to sufficiently allege facts showing that Defendant never intended to perform under the Guaranty Agreement. Defendant is mistaken. The Complaint alleges that after Defendant executed the Guaranty Agreement, Plaintiff sent weekly requests for the working capital necessary to operate the Wagner Hotel, but that notwithstanding these weekly requests, Defendant did not provide the funds necessary for Owner to fulfill its obligations under the Operating Agreement. "'Fraudulent intent may be established by circumstantial evidence, or by inferences drawn from a course of conduct.' Therefore, in determining whether the debtor had no intention to perform, a court may look to all the surrounding facts and circumstances." *McCrary v. Barrack (In re Barrack)*, 217 B.R. 598, 607 (B.A.P. 9th Cir. 1998) (internal citations omitted). By alleging that Defendant's default occurred immediately after he executed the Guaranty Agreement, the Complaint sufficiently alleges that Defendant never intended to perform under the Guaranty Agreement.

Defendant next asserts that the Complaint does not sufficiently allege facts showing that Plaintiff justifiably relied upon Defendant's representations in the Guaranty Agreement when it elected not to terminate the Operating Agreement. This argument fails. The Complaint alleges that (1) Plaintiff had the right to terminate the Operating Agreement and to cease operating the Wagner Hotel as a result of Owner's failure to fulfill its obligations under the Operating Agreement and that (2) Defendant executed the Guaranty Agreement to induce Plaintiff to forebear from executing its termination rights and to continue operating the Wagner Hotel. These allegations support a reasonable inference that Plaintiff justifiably relied upon the Guaranty Agreement when it elected not to terminate the Operating Agreement.

Defendant argues that the Complaint fails to state a claim because he was only the guarantor of Owner's obligations and is not personally liable for any indebtedness. Defendant's argument ignores the specific terms of the Guaranty Agreement. By executing the Guaranty Agreement, Defendant became personally liable for any indebtedness arising in connection with Owner's failure to perform under the Operating Agreement.

Finally, Defendant argues that the Complaint does not sufficiently allege facts showing that Defendant's execution of the Guaranty Agreement was the proximate cause of Plaintiff's damages. Defendant's theory is that Plaintiff's damages were not the result of Defendant's conduct, but instead were caused by the economic devastation wrought upon the hospitality industry by the COVID-19 pandemic.

There can be no doubt that the COVID-19 pandemic caused severe economic damage to the hospitality industry. However, as alleged in the Complaint, Plaintiff

would not have continued to operate the Wagner Hotel had Defendant not executed the Guaranty Agreement. Therefore, the Complaint sufficiently alleges that Defendant proximately caused Plaintiff's injuries.

B. The Complaint States a Claim Under § 523(a)(6)

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and "malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted).

In addition, the injury-producing conduct must be tortious in order to be excepted from discharge under §523(a)(6). *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). "[C]onduct is not tortious under § 523(a)(6) simply because injury is intended or 'substantially likely to occur,' but rather is only tortious if it constitutes a tort under state law." *Id.* at 1041.

The Complaint's allegations are sufficient to state a claim under § 523(a)(6). The Complaint alleges that Defendant executed the Guaranty Agreement to induce Plaintiff to continue operating the Wagner Hotel, even though Defendant never intended to perform under the Guaranty Agreement. In view of the presumption that Defendant knows the natural consequences of his actions, these allegations are sufficient to show that Defendant either intended to harm Plaintiff, or was substantially certain that Plaintiff would be harmed by his actions. In addition, these allegations are sufficient to state a claim that Defendant intentionally engaged in an injury-causing wrongful act without just cause or excuse.

Defendant's argument that the Complaint fails to state a claim under § 523(a)(6) because it does not allege facts showing that Defendant committed tortious conduct is without merit. As discussed in Section II.A., above, the Complaint sufficiently alleges

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CONT... Howard Chorng Jeng Wu **Chapter 7**

that Defendant committed fraud by executing the Guaranty Agreement. As such, the Complaint sufficiently alleges that Defendant committed tortious conduct by executing an agreement which he never intended to perform.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is **DENIED**. No later than **June 21, 2022**, Defendant shall file an Answer to the Complaint. The Court will prepare and enter an order denying the Motion to Dismiss.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Plaintiff(s):

Highgate Hotels, L.P.	Represented By Michael Niborski Todd Evan Soloway Bryan Thomas Mohler Itai Yehuda Raz

Trustee(s):

Heide Kurtz (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM

CONT... Howard Chorng Jeng Wu **Chapter 7**

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM
2:21-19480 Howard Chorng Jeng Wu **Chapter 7**
Adv#: 2:22-01077 Hill et al v. Wu

#105.00 HearingRE: [17] Motion to Dismiss Adversary Proceeding Under Rule 7012 For Failure to State a Claim Upon Which Relief can be Granted, with Notice and Proof of Service Thereof

Docket 17

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Motion to Dismiss is **DENIED**. Defendant shall file an Answer to the Complaint by no later than **June 21, 2022**.

Pleadings Filed and Reviewed:
1) First Amended Complaint to Determine Debt Nondischargeable Pursuant to 11 U.S.C. § 523 [Adv. Doc. No. 9] (the "Complaint")
2) Notice of Motion and Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 17] (the "Motion to Dismiss")
3) Opposition of Plaintiffs to Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 20] (the "Opposition")
4) Reply to Opposition to Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 21]
   a) Request for Judicial Notice in Support of Defendant's Reply to Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 22]

I. Facts and Summary of Pleadings

11:00 AM

CONT... Howard Chorng Jeng Wu **Chapter 7**

A. Procedural Background

On December 29, 2021 (the "Petition Date"), Howard Wu ("Defendant") filed a voluntary Chapter 7 petition. On April 14, 2022, Darren Hill, in his individual capacity ("Hill") and in his capacity as Trustee of the Hill Living Trust (the "Hill Trust"), Edward Mark, in his capacity as Trustee of the Capital Lending Resources, Inc. Profit Sharing Trust (the "CLR Trust"), Craig Quinn, in his capacity as Trustee of the Craig and Colleen Quinn Family Trust dated September 2000 (the "Quinn Trust"), Lee Opolinsky, in his individual capacity ("Opolinsky") and in his capacity as the Trustee of the Lee Opolinsky Living Trust (the "Opolinsky Trust"), Brandon Sokolosky, in his capacity as Trustee of the Provident Trust Group FBO Brandon D Sokolosky SEP IRA (the "Sokolosky Trust"), Michael Poyer, in his capacity as Trustee of the Michael and Christina Poyer Family Trust (the "Poyer Trust"), Scott Hochstadt ("Hochstadt"), Just Jill Inc. ("Just Jill"), and Deragisch I, LLC ("Deragisch," and together with Hill, the Hill Trust, the CLR Trust, the Quinn Trust, Opolinsky, the Opolinsky Trust, the Sokolosky Trust, the Poyer Trust, Hochstadt, and Just Jill, the "Plaintiffs") filed a *First Amended Complaint to Determine Debt Nondischargeable Pursuant to 11 U.S.C. § 523* [Adv. Doc. No. 9] (the "Complaint") against Defendant. Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Plaintiffs oppose the Motion to Dismiss.

B. Summary of the Complaint

1. Summary of the Complaint's Allegations

The allegations of the Complaint may be summarized as follows:

On September 20, 2019, Defendant and his business partner, Taylor Woods ("Woods"), approached Plaintiffs with an opportunity to invest in the Hilton Nashville Airport Hotel (the "Hotel"). Complaint at ¶ 9. Defendant and Woods represented orally and in writing that any investment funds received from Plaintiffs would be used exclusively to purchase and to manage the Hotel. *Id.*

Defendant presented a written *Membership Interest Subscription Agreement* (the "Subscription Agreement") to each of the Plaintiffs, which contained the following representations:

1) Each Plaintiff would make an investment of capital (the "Capital Investment") in Eagle LLC that would be used exclusively to acquire and develop the Hotel;
2) Eagle LLC would not use or apply any of the Capital Investment money until it

had raised the necessary funds to acquire the Hotel;
3) Pending the acquisition of the Hotel, the Capital Investment would be deposited into an interest-bearing secure bank account;
4) If Eagle LLC could not raise sufficient funds to acquire the Hotel, the Capital Investment, together with any interest thereon, would be returned to each Plaintiff.

Id. at ¶ 11.

On September 20, 2019, Plaintiffs entered into a written *Operating Agreement for Eagle LLC* (the "Operating Agreement"), which contained the following representations:

1) Woods was Eagle LLC's agent for service of process;
2) Urban Commons was Eagle LLC's initial manager;
3) Woods and Defendant owned and controlled Urban Commons;
4) All major decisions had to be approved by the majority of the investors;
5) Urban Commons, as manager, had the right to use the Capital Investment to acquire the Hotel with a majority vote of the investors, and, following the acquisition, to manage and operate the Hotel.

Id. at ¶ 12.

Based on the representations of Defendant and Woods, Plaintiffs invested approximately $1.61 million in Eagle LLC. *Id.* at ¶ 13.

The purchase of the Hotel was supposed to close by January 3, 2020. *Id.* at ¶ 15. Although the seller was prepared to close, Defendant and Woods were unable to finalize the deal. *Id.*

In February 2020, Defendant and Woods released a portion of the Plaintiffs' Capital Investment to the seller of the Hotel on a non-refundable basis in order to gain additional time to close the sale. *Id.* at ¶ 17. Defendant and Woods continued to release portions of the Capital Investment to the seller, again for the purpose of securing additional time to close the sale, until the Capital Investment was depleted. *Id.* The use of the Capital Investment in this manner was in violation of the requirements of the Subscription Agreement and the Operating Agreement. *Id.* at ¶ 18.

Defendant and Woods represented to Plaintiffs that their Capital Investment was still being maintained in a secure banking account, even though it had been released to the seller of the Hotel. *Id.* at ¶ 18.

In September 2020, Defendant and Woods executed an agreement guaranteeing the return of the Capital Investment (the "Guarantee Agreement"). *Id.* at ¶ 20. By way of the Guarantee Agreement, Defendant personally guaranteed the full return of the Capital Investment if the Hotel was not acquired by September 30, 2020. *Id.* Urban Commons, Defendant, and Woods failed to acquire the Hotel by the September 30, 2020 deadline and failed to repay the Capital Investment. *Id.* at ¶ 22.

2. Summary of the Complaint's Claims for Relief

Based upon the foregoing allegations, the Plaintiff seeks a determination that the indebtedness at issue is nondischargeable under § 523(a)(2)(A) and (a)(6).

C. Summary of Papers Filed in Connection with the Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant argues that the Complaint fails to state a claim because it alleges that Defendant did not become involved by executing the Guarantee Agreement until after Plaintiffs had made their investment. Plaintiffs argue that it is immaterial that the Guarantee Agreement was executed subsequent to the date that Plaintiffs made their investment, because Defendant is indebted to Plaintiffs by virtue of the Guarantee Agreement and because Defendant induced Plaintiffs to make their investment by means of fraudulent representations.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice…. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But

where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' … it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation…. A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A. The Complaint States a Claim Under § 523(a)(2)(A)

Section 523(a)(2)(A) provides: "A discharge under section 727 … of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, a creditor must prove that:

1) the debtor made the representations;
2) that at the time he knew they were false;
3) that he made them with the intention and purpose of deceiving the creditor;
4) that the creditor relied on such representations; and
5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

In re Sabban, 600 F.3d 1219, 1222 (9th Cir. 2010).

Claims for relief under §523(a)(2)(A) involve allegations of fraud, and therefore must be pleaded with particularity in accordance with the requirements of Civil Rule 9(b). To satisfy Civil Rule 9(b), allegations of fraud must be "'specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.' A pleading 'is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.' The complaint must specify such facts as the times, dates,

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CONT... Howard Chorng Jeng Wu **Chapter 7**

places, benefits received, and other details of the alleged fraudulent activity." *Neubronner v. Milken*, 6 F.3d 666, 671–72 (9th Cir. 1993); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged.").

Defendant argues that the Complaint fails to state a claim because, as alleged in the Complaint, Defendant did not guaranty Plaintiffs' Capital Investment until September 2020, one year after Plaintiffs had invested the funds in Eagle LLC. The Court disagrees.

As the Ninth Circuit has explained, a non-dischargeability action requires consideration of two distinct issues: first, a determination of whether Defendant is indebted to the Plaintiffs; and second, a determination of whether the indebtedness is non-dischargeable. *Banks v. Gill Distribution Centers, Inc.*, 263 F.3d 862, 868 (9th Cir. 2001). By alleging that Defendant executed the Guaranty Agreement, the Complaint sufficiently alleges that Defendant is indebted to the Plaintiffs. By alleging that Defendant induced Plaintiffs to make the investment which Defendant later guaranteed by making false representations, the Complaint states a claim under § 523(a)(2)(A).

Specifically, the Complaint alleges that Defendant induced Plaintiffs to make the Capital Investment by representing that it would be used only to acquire the Hotel, and that this representation was false. "'Fraudulent intent may be established by circumstantial evidence, or by inferences drawn from a course of conduct.' Therefore, in determining whether the debtor had no intention to perform, a court may look to all the surrounding facts and circumstances." *McCrary v. Barrack (In re Barrack)*, 217 B.R. 598, 607 (B.A.P. 9th Cir. 1998) (internal citations omitted). The Complaint alleges that after Plaintiffs made their investment, Defendant caused the business entities that Defendant controlled to use the Capital Investment for purposes other than acquiring the Hotel. This allegation is sufficient to support a reasonable inference that at the time Plaintiffs made the investment, Defendant knew that his representation that the Capital Investment would be used only to acquire the Hotel was false.

The Complaint further alleges that Plaintiffs made the Capital Investment in reliance upon the promise that it would be used only to acquire the Hotel, and that Plaintiffs sustained damage when the Capital Investment was instead converted into non-refundable payments to the seller to obtain further extensions of the deadline to close the transaction. In sum, the Complaint's factual allegations satisfy all the elements necessary to state a claim under § 523(a)(2)(A).

B. The Complaint States a Claim Under § 523(a)(6)

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful and malicious' injury to another person or to the property of another. The 'willful' and "malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). When determining intent, there is a presumption that the debtor knows the natural consequences of his actions. *Ormsby v. First Am. Title Co. of Nevada (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. 2010). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted).

In addition, the injury-producing conduct must be tortious in order to be excepted from discharge under §523(a)(6). *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). "[C]onduct is not tortious under § 523(a)(6) simply because injury is intended or 'substantially likely to occur,' but rather is only tortious if it constitutes a tort under state law." *Id.* at 1041.

The Complaint's allegations are sufficient to state a claim under § 523(a)(6). The Complaint alleges that Defendant induced Plaintiffs to make an investment by representing that the investment would be used only to acquire the Hotel, but that Defendant subsequently caused Plaintiffs' investment to be used for purposes other than acquiring the Hotel. In view of the presumption that Defendant knows the natural consequences of his actions, these allegations are sufficient to show that Defendant either intended to harm Plaintiffs, or was substantially certain that Plaintiff would be harmed by his actions. In addition, these allegations are sufficient to state a claim that Defendant intentionally engaged in an injury-causing wrongful act without just cause or excuse.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is **DENIED**. No later than **June 21, 2022**, Defendant shall file an Answer to the Complaint. The Court will prepare and enter an order denying the Motion to Dismiss.

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CONT... Howard Chorng Jeng Wu **Chapter 7**

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu	Represented By Eric Bensamochan

Plaintiff(s):

Lee Opolinsky	Represented By Roye Zur
Brandon Sokolosky	Represented By Roye Zur
Michael Poyer	Represented By Roye Zur
Scott Hochstadt	Represented By Roye Zur
Just Jill Inc	Represented By Roye Zur
Deragisch I, LLC	Represented By Roye Zur
Darren Hill	Represented By Roye Zur

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

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CONT... Howard Chorng Jeng Wu **Chapter 7**

Edward Marek	Represented By Roye Zur
William McBride	Represented By Roye Zur
Craig Quinn	Represented By Roye Zur

Trustee(s):

Heide Kurtz (TR)	Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM
2:21-19480 Howard Chorng Jeng Wu **Chapter 7**
Adv#: 2:22-01078 JOHN MICHAEL DANNELLEY and MARY A. DANNELLEY, TRU v.

#106.00 HearingRE: [9] Motion to Dismiss Adversary Proceeding Under Rule 7012 For Failure to State a Claim Upon Which Relief Can be Granted with Notice and Proof of Service Thereof

Docket 9

Tentative Ruling:

6/6/2022

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878 no later than one hour before the hearing.

For the reasons set forth below, the Motion to Dismiss is **DENIED**. Defendant shall file an Answer to the Complaint by no later than **June 21, 2022**.

Pleadings Filed and Reviewed:
1) Complaint for Determination of Nondischargeability of Debts Pursuant to 11 U.S.C. § 523 [Adv. Doc. No. 1] (the "Complaint")
2) Notice of Motion and Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 9] (the "Motion to Dismiss")
3) Plaintiffs' Opposition to Defendant's Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 12] (the "Opposition")
4) Reply to Opposition to Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 13]
   a) Request for Judicial Notice in Support of Reply to Opposition to Motion to Dismiss Adversary Complaint Under Rule 7012 for Failure to State a Claim Upon Which Relief Can Be Granted [Adv. Doc. No. 14] (the "RJN")

I. Facts and Summary of Pleadings

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CONT... Howard Chorng Jeng Wu **Chapter 7**

A. Procedural Background

On December 29, 2021 (the "Petition Date"), Howard Wu ("Defendant") filed a voluntary Chapter 7 petition. On March 28, 2022, John Michael Dannelley and Mary A. Dannelley, as Trustees of the John Michael Dannelley and Mary A. Dannelley Revocable Trust ("Plaintiffs") filed a *Complaint for Determination of Nondischargeability of Debts Pursuant to 11 U.S.C. § 523* [Adv. Doc. No. 1] (the "Complaint") against Defendant. Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Plaintiffs oppose the Motion to Dismiss.

B. Summary of the Complaint

1. Summary of the Complaint's Allegations

The allegations of the Complaint may be summarized as follows:

Urban Commons, LLC ("Urban Commons") was the manager of a large portfolio of limited liability companies ("LLCs") operating primarily in the hospitality space. Complaint at ¶ 12. Defendant and Taylor Woods ("Woods") each own 50% of Urban Commons. *Id.* at ¶ 8.

In 2014, Plaintiffs agreed to invest approximately $2,766,250 in four LLCs managed by Urban Commons (the "UC Entities"). *Id.* at ¶¶ 12–13. At the time Plaintiffs made the investment, Defendant and Woods represented to Plaintiffs that their investment would be secured by four hotel properties indirectly owned by the UC Entities. *Id.* at ¶ 14.

In late 2017 or early 2018, Defendant and Woods informed Plaintiffs that Urban Commons had found a buyer for the four properties indirectly owned by the UC Entities in which Plaintiffs had invested. *Id.* at ¶ 17. Defendant and Woods represented to Plaintiffs that if they consented to the sale, they would recoup all of their initial investment plus a substantial return. *Id.*

In April 2018, Defendant and Woods sent Plaintiffs a *Consent Solicitation Statement* (the "Consent Solicitation") for each of the UC Entities, seeking Plaintiffs' consent to the proposed sale transaction. *Id.* at ¶ 20. Each of the Consent Solicitations described the transaction as a sale of 100% of the membership interests in the subsidiary LLC that owned and operated the hotel property to an entity called U.S. Hospitality Investments, LLC (the "Purchaser"). *Id.* Defendant and Woods represented that the transaction was at arms-length and that Defendant and Woods had no relationship to the Purchaser, which was controlled by an independent group of

investors from China and Singapore. *Id.* In fact, Defendant and Woods were directly involved with the Purchaser, including Woods' tenure as the Purchaser's Chief Executive Officer since January 2018. *Id.*

At the time Defendant and Woods solicited Plaintiffs' consent to the transaction, they claimed that Urban Commons would become the manager of the Purchaser, and that this would be advantageous to Plaintiffs because it would allow for a seamless transition of the properties back to the investors in the event the Purchaser defaulted. *Id.* at ¶ 23. Defendant and Woods further represented that although the purchase price would be paid in several installments, investors were protected because Urban Commons could retake the properties if the Purchaser defaulted. *Id.* at ¶¶ 23–31.

The actual deal that was consummated differed materially from the deal that Defendant and Woods had described to Plaintiffs. *Id.* at ¶ 31. Specifically, (1) Urban Commons did *not* have the ability to retake the Properties in the event of default; (2) a significant portion of the Purchaser's initial cash payment was remitted to Defendant and Woods personally, rather than Plaintiffs; and (3) Defendant and Woods received a substantial number of shares in a newly-created Real Estate Investment Trust (the "REIT") that they failed to disclose to Plaintiffs. *Id.* at ¶¶ 28–31.

On May 13, 2019, Defendant and Woods represented to Plaintiffs that the Purchaser was threatening to back out of the deal unless Plaintiffs and other large investors agreed to defer the return of a significant percentage of their investment. *Id.* at ¶ 32. In reliance upon these representations, Plaintiffs executed a rollover consent (the "Rollover Consent") on May 13, 2019. *Id.* at ¶ 33. The Rollover Consent provided that the deferred payment would be rolled into an investment in a new entity called UC Holdings Lendco LLC ("UC Holdings"). *Id.*

Plaintiffs subsequently learned that none of the representations made in or in connection with the Rollover Consent were true. *Id.* Plaintiffs never received units in UC Holdings. *Id.*

In August 2020, Plaintiffs advised Defendant and Woods that they intended to commence litigation to recover their investment. *Id.* at ¶ 40. On September 2, 2020, Defendant, Woods, and Urban Commons, on the one hand, and Plaintiffs, on the other hand, entered into a *Forbearance and Tolling Agreement* (the "Forbearance Agreement"), under which Defendant, Woods, and Urban Commons agreed to make installment payments to Plaintiffs. *Id.* at ¶ 41. To induce Plaintiffs to enter into the Forbearance Agreement, Defendant agreed to be personally liable to Plaintiffs for the installment payments required under the Forbearance Agreement. *Id.* at ¶ 42. Defendant never intended to make any of the payments under the Forbearance

Agreement. *Id.* at ¶ 43. Defendant transmitted the executed Forbearance Agreement to Plaintiffs on September 2, 2020, but failed to make the initial installment payment of $250,000 which was due on that same date. *Id.*

2. Summary of the Complaint's Claims for Relief

Based upon the foregoing allegations, the Plaintiff seeks a determination that the indebtedness at issue is nondischargeable under § 523(a)(2), (a)(4), (a)(6), and (a)(19).

C. Summary of Papers Filed in Connection with the Motion to Dismiss

Defendant moves to dismiss the Complaint for failure to state a claim upon which relief can be granted. Defendant argues that the Complaint's allegations of fraud are not pleaded with sufficient particularity and that the Complaint does not sufficiently distinguish between representations made by Defendant versus representations made by Woods. Plaintiffs contend that the Complaint's allegations are sufficiently detailed to support a reasonable inference that Defendant is liable for the misconduct alleged.

II. Findings and Conclusions

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations omitted). To state a plausible claim for relief, a complaint must satisfy two working principles:

> First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitations of the elements of a cause of action, supported by mere conclusory statements, do not suffice…. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]"—"that the pleader is entitled to relief."

Id. (citing Civil Rule 8(a)(2)).

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Although the pleading standard Civil Rule 8 announces "does not require 'detailed factual allegations,' … it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation…. A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

A. The Complaint States a Claim Under § 523(a)(2)

Section 523(a)(2)(A) provides: "A discharge under section 727 … of this title does not discharge an individual debtor from any debt for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, a creditor must prove that:

1) the debtor made the representations;
2) that at the time he knew they were false;
3) that he made them with the intention and purpose of deceiving the creditor;
4) that the creditor relied on such representations; and
5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made.

In re Sabban, 600 F.3d 1219, 1222 (9th Cir. 2010).

Section 523(a)(2)(B) excepts from discharge indebtedness obtained through use of a statement in writing:

1) that is materially false;
2) respecting the debtor's or an insider's financial condition;
3) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and
4) that the debtor caused to be made or published with intent to deceive....

§ 523(a)(2)(B).

To prevail upon a claim under § 523(a)(2)(B), a creditor must satisfy, by a preponderance of the evidence, the following requirements:

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1) a representation of fact by the debtor,
2) that was material,
3) that the debtor knew at the time to be false,
4) that the debtor made with the intention of deceiving the creditor,
5) upon which the creditor relied,
6) that the creditor's reliance was reasonable,
7) that damage proximately resulted from the representation.

In re Candland, 90 F.3d 1466, 1469 (9th Cir. 1996), as amended (Oct. 2, 1996).

The requirements are similar to those imposed by § 523(a)(2)(A), except that the creditor must make a heightened showing in two respects: (1) the representation at issue must be *materially* false (as opposed to simply false), and (2) the creditor's reliance must be *reasonable* (as opposed to justifiable).

A statement is "materially false if it includes information which is 'substantially inaccurate' and is of the type that would affect the creditor's decision making process. To except a debt from discharge, the creditor must show not only that the statements are inaccurate, but also that they contain important and substantial untruths." *Candland*, 90 F.3d at 1470.

A "statement is 'respecting' a debtor's financial condition if it has a direct relation to or impact on the debtor's overall financial status." *Lamar, Archer & Cofrin, LLP v. Appling,* 138 S. Ct. 1752, 1763–64, 201 L. Ed. 2d 102 (2018).

Claims for relief under §523(a)(2) involve allegations of fraud, and therefore must be pleaded with particularity in accordance with the requirements of Civil Rule 9(b). To satisfy Civil Rule 9(b), allegations of fraud must be "'specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong.' A pleading 'is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that the defendant can prepare an adequate answer from the allegations.' The complaint must specify such facts as the times, dates, places, benefits received, and other details of the alleged fraudulent activity." *Neubronner v. Milken*, 6 F.3d 666, 671–72 (9th Cir. 1993); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1106 (9th Cir. 2003) ("Averments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged.").

Defendant argues that the Complaint fails to state a claim because it alleges that certain of the misrepresentations were made by both Defendant and Woods, rather than solely by Defendant. This argument fails. The Complaint sufficiently alleges that

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Defendant intentionally conspired with Woods to defraud Plaintiffs, and that Defendant took various actions in furtherance of the conspiracy. *See, e.g.*, Complaint at ¶ 45 (alleging that Defendant conspired with Woods to induce Plaintiffs to enter into the Forbearance Agreement); *id.* at ¶ 37 (alleging that Defendant conspired with Woods by concocting a scheme under which "money belonging to the [Plaintiffs] was loaned from one entity controlled by [Defendant] and Woods to another entity controlled by [Defendant] and Woods, which in turn loaned the money to yet another entity controlled by [Defendant] and Woods, all without disclosing the true relationships of the entities or the nature of the transactions to the Plaintiffs"); *id.* at ¶¶ 25–31 (alleging that Defendant conspired with Woods to misrepresent to Plaintiffs that the deal with the Purchaser was at arms-length, when in fact the Purchaser was controlled by Defendant and Woods). Because Woods and Defendant were business partners who allegedly engaged in a conspiracy to defraud Plaintiffs, misrepresentations made by Woods in furtherance of that conspiracy can be imputed to Defendant for purposes of § 523(a)(2)(A). *See, e.g.*, *Tsurukawa v. Nikon Precision, Inc. (In re Tsurukawa)*, 287 B.R. 515, 525 (B.A.P. 9th Cir. 2002) ("a debt may be excepted from discharge either when (1) the debtor personally commits actual, positive fraud, or (2) the actual fraud of another is imputed to the debtor under partnership/agency principles"); *see also MacDonald v. Buck (In re Buck)*, 75 B.R. 417, 420–21 (Bankr. N.D. Cal. 1987) ("a debtor who has made no false representation may nevertheless be bound by the fraud of another if a debtor is a knowing and active participant in the scheme to defraud").

The Complaint's factual allegations are sufficient to state a claim under § 523(a)(2)(A). The Complaint alleges that Defendant (1) induced Plaintiffs to execute the Consent Solicitation and the Rollover Consent by making representations that were false; (2) that Plaintiffs would not have agreed to the terms of the Consent Solicitation had they known that the transaction was not at arms-length and that Urban Commons did not have the ability to retake the hotel properties if the Purchaser defaulted; and (3) that Plaintiffs were damaged by these misrepresentations given that the value of their investment was substantially impaired after the transaction was completed.

In his Reply, Defendant argues for the first time that the Consent Solicitation sufficiently disclosed the relationship of Defendant and Woods to the Purchaser. Defendant did not present this argument in the Motion to Dismiss. Local Bankruptcy Rule ("LBR") 9013-1(g)(4) prohibits the introduction of new evidence or arguments in reply papers. LBR 9013-1(g)(4) is a codification of the Ninth Circuit's well-established "general rule that [litigants] cannot raise a new issue for the first time in

their reply briefs." *Martinez-Serrano v. I.N.S.*, 94 F.3d 1256, 1259 (9th Cir. 1996); *see also Daghlian v. DeVry University, Inc.,* 461 F. Supp. 2d 1121, 1143 n. 37 (C.D. Cal. 2006) ("It is improper for the moving party to 'shift gears' and introduce new facts or different legal arguments in the reply brief than [those that were] presented in the moving papers."). Introduction of new arguments in reply papers deprives the opposing party of the opportunity to respond, which violates due process. Defendant has waived this argument by waiting until the Reply to assert it.

Although the argument has been waived, to ensure a complete record, the Court finds it appropriate to explain why the argument lacks merit. The Consent Solicitation disclosed only that Urban Commons could become the manager of the Purchaser in certain circumstances. It did *not* disclose the key fact that Defendant and Woods controlled the Purchaser.

The Complaint states a claim under § 523(a)(2)(B). As explained above, the requirements imposed by § 523(a)(2)(A) are the same as those imposed by § 523(a)(2)(B), except that Plaintiffs must make a heightened showing in two respects: (1) the representation at issue must be *materially* false (as opposed to simply false), and (2) the creditor's reliance must be *reasonable* (as opposed to justifiable). The Complaint sufficiently alleges that the written representations made in the Consent Solicitation were materially false. The Complaint alleges that the Consent Solicitation falsely stated that the transaction was at arms-length (when in fact Defendant and Woods controlled the Purchaser) and that Urban Commons would have recourse to the hotel properties if the Purchaser defaulted (which was not true). The Complaint sufficiently alleges that Plaintiffs' reliance upon the representations in the Consent Solicitation was reasonable. The Complaint alleges that Plaintiffs trusted the representations made by Defendant because he held himself out as a sophisticated businessman who oversaw hundreds of millions of dollars in invested funds.

B. The Complaint States a Claim Under § 523(a)(4) on the Ground of Fraud or Defalcation While Acting in a Fiduciary Capacity

Section 523(a)(4) excepts from discharge "any debt for fraud or defalcation while acting in a fiduciary capacity." "To prevail on a nondischargeability claim under § 523(a)(4) the plaintiff must prove not only the debtor's fraud or defalcation, but also that the debtor was acting in a fiduciary capacity when the debtor committed the fraud or defalcation." *Honkanen v. Hopper (In re Honkanen)*, 446 B.R. 373, 378 (B.A.P. 9th Cir. 2011).

Federal bankruptcy law determines whether a fiduciary relationship exists within

the meaning of §523(a)(4). *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1125 (9th Cir. 2003). For purposes of §523(a)(4), the fiduciary relationship "must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt." *Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir. 1996). State law determines whether the requisite trust relationship exists. *Mele v. Mele (In re Mele)*, 501 B.R. 357, 363 (B.A.P. 9th Cir. 2013).

"[U]nder California law, managers of a limited liability company are fiduciaries for purposes of § 523(a)(4)." *Plikaytis v. Roth (In re Roth)*, 518 B.R. 63, 72 (S.D. Cal. 2014), aff'd, 662 F. App'x 540 (9th Cir. 2016). The Complaint alleges that Defendant and Woods owned or controlled the LLCs that Plaintiffs invested in. Therefore, the Complaint sufficiently alleges that Defendant was acting in a fiduciary capacity when engaging in the wrongful conducted that resulted in the loss of Plaintiffs' investment.

C. The Complaint States a Claim Under § 523(a)(4) on the Ground of Embezzlement

Section 523(a)(4) excepts from discharge debts arising from embezzlement. "Under federal law, embezzlement in the context of nondischargeability has often been defined as 'the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come.' Embezzlement, thus, requires three elements: '(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which [it] was entrusted; and (3) circumstances indicating fraud.'" *Transamerica Comm. Finance Corp. v. Littleton (In re Littleton)*, 942 F.2d 551, 555 (9th Cir. 1991) (internal citations omitted).

The Complaint alleges that (1) Defendant took possession of Plaintiffs' property (their initial investments), that (2) Defendant used the property for purposes other than that for which it was intended by, among other things, failing to consummate the transaction in the manner that had been described in the Consent Solicitation, and that (3) the misuse of the property was accompanied by circumstances indicating fraud, including the fact that the transaction with the Purchaser was represented to be at arms-length when in fact Defendant and Woods controlled the Purchaser. These allegations state a claim under § 523(a)(4) on the grounds of embezzlement.

D. The Complaint States a Claim Under § 523(a)(6)

"Section 523(a)(6) excepts from discharge debts arising from a debtor's 'willful

and malicious' injury to another person or to the property of another. The 'willful' and "malicious' requirements are conjunctive and subject to separate analysis." *Plyam v. Precision Development, LLC (In re Plyam)*, 530 B.R. 456, 463 (9th Cir. B.A.P. 2015) (internal citations omitted).

An injury is "willful" when "a debtor harbors 'either subjective intent to harm, or a subjective belief that harm is substantially certain.' The injury must be deliberate or intentional, 'not merely a deliberate or intentional act that leads to injury.'" *Id.* at 463 (internal citations omitted). An injury is "malicious" if it "involves '(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse.'" *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146–47 (9th Cir. 2002) (internal citations omitted).

In addition, the injury-producing conduct must be tortious in order to be excepted from discharge under §523(a)(6). *Lockerby v. Sierra*, 535 F.3d 1038, 1040 (9th Cir. 2008). "[C]onduct is not tortious under § 523(a)(6) simply because injury is intended or 'substantially likely to occur,' but rather is only tortious if it constitutes a tort under state law." *Id.* at 1041.

The Complaint alleges that (1) Defendant transferred the real properties that were supposed to secure the Plaintiffs' investment to a foreign REIT controlled by Defendant and Woods, leaving the investment unsecured; that (2) Defendant fraudulently concealed this unauthorized transfer from Plaintiffs; and that (3) Defendant and Woods paid substantial sums to themselves rather than returning the Plaintiffs' investment. In view of the presumption that Defendant knows the natural consequences of his actions, these allegations are sufficient to show that Defendant either intended to harm Plaintiff, or was substantially certain that Plaintiff would be harmed by his actions. In addition, these allegations are sufficient to state a claim that Defendant intentionally engaged in an injury-causing wrongful act without just cause or excuse.

E. The Complaint States a Claim Under § 523(a)(19)

Section 523(a)(19) excepts from discharge any debt resulting from (1) "the violation of any of the Federal securities laws …, any of the State securities laws, or any regulation or order issued under such Federal or State securities laws" or from (2) "common law fraud, deceit, or manipulation in connection with the purchase or sale of any security."

In his Reply, Defendant argues that the Complaint fails to state a claim under § 523(a)(19) because it does not sufficiently allege that Defendant knew his

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statements were false at the time he made them. Defendant did not present this argument in the Motion to Dismiss. As explained in Section II.A., above, the introduction of new arguments for the first time in reply papers is improper. Defendant has waived this argument by waiting until the Reply to assert it.

In any event, the Court finds that the Complaint states a claim under § 523(a)(19). The Complaint sufficiently alleges that Defendant engaged in "common law fraud, deceit, or manipulation in connection with" the sale of a security. As discussed above, the Complaint alleges that Defendant made numerous misrepresentations to Plaintiffs to induce them to make their investment.

III. Conclusion

Based upon the foregoing, the Motion to Dismiss is **DENIED**. No later than **June 21, 2022**, Defendant shall file an Answer to the Complaint. The Court will prepare and enter an order denying the Motion to Dismiss.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

Howard Chorng Jeng Wu — Represented By Eric Bensamochan

Defendant(s):

Howard Chorng Jeng Wu — Represented By Eric Bensamochan

Plaintiff(s):

JOHN MICHAEL DANNELLEY — Represented By Anthony Bisconti

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

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CONT... Howard Chorng Jeng Wu **Chapter 7**

Trustee(s):

Heide Kurtz (TR) Pro Se

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

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2:18-20151 Verity Health System of California, Inc. **Chapter 11**

Adv#: 2:20-01616 Official Committee of Unsecured Creditors of Verit v. Bluemountain

#107.00 Pre-Trial Conference
RE: [110] Amended Complaint (Second Amended Complaint) by Anthony Bisconti on behalf of Howard B Grobstein against David Sachs, Andrei Soran, Anthony Armada, Glenn Marshack, Stephen Fomey, Mitchell Creem, Berge Badalian, NantWorks, LLC, Assured Investment Management LLC (f/k/a Bluemountain Capital Management, LLC, a Delaware limited liability company, BMSB L.P., Bluemountain Foinaven Master Fund L.P., A Cayman Island Exempted Limited Partnership, Bluemountain Guadalupe Peak Fund L.P., A Delaware Limited Partnership, Bluemountain Logan Opportunities Master Fund L.P., A Cayman Island Exempted Limited Partnership, Bluemountain Montenvers Master Fund SCA Sicavsif, A Luxembourg Corporate Partnership Limited By Shares, Bluemountain Summit Opportunities Fund II (US) L.P., A Delaware Limited Partnership, Integrity Healthcare, LLC, John Doe Companies 1-50, John Doe Individuals 1-50. (Bisconti, Anthony)

Docket 110

***** VACATED *** REASON: CONTINUED 8-9-22 AT 11:00 AM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Verity Health System of California, Represented By
Samuel R Maizel
John A Moe II
Tania M Moyron
Claude D Montgomery
Sam J Alberts
Shirley Cho
Patrick Maxcy
Steven J Kahn
Nicholas A Koffroth
Kerry L Duffy
Brigette G McGrath

11:00 AM
CONT... Verity Health System of California, Inc. **Chapter 11**

Gary D Underdahl
Nicholas C Brown
Anna Kordas
Mary H Haas
Robert E Richards
Lawrence B Gill
Richard Reding
Stephen J O'brien
Roger Kent Heidenreich

Defendant(s):

NantWorks, LLC	Pro Se
Berge Badalian	Pro Se
Mitchell Creem	Pro Se
Stephen Fomey	Pro Se
Glenn Marshack	Pro Se
Anthony Armada	Pro Se
Andrei Soran	Pro Se
David Sachs	Pro Se
John Doe Companies 1-50	Pro Se
Assured Investment Management	Represented By Chet Kronenberg Alan C Turner William T Russell Jr Sandeep Qusba Thomas M Cramer
BMSB L.P.	Represented By Chet Kronenberg
Integrity Healthcare, LLC	Represented By Bruce Bennett Danielle R Leneck

United States Bankruptcy Court
Central District of California
Los Angeles
Ernest Robles, Presiding
Courtroom 1568 Calendar

Tuesday, June 7, 2022 **Hearing Room 1568**

11:00 AM

CONT... Verity Health System of California, Inc. **Chapter 11**

Bluemountain Montenvers Master	Represented By Chet Kronenberg
Bluemountain Logan Opportunities	Represented By Chet Kronenberg
Bluemountain Foinaven Master	Represented By Chet Kronenberg
Bluemountain Summit Opportunities	Represented By Chet Kronenberg
Bluemountain Guadalupe Peak Fund	Represented By Chet Kronenberg
John Doe Individuals 1-50	Pro Se

Plaintiff(s):

Official Committee of Unsecured	Represented By Steven J. Katzman

Trustee(s):

Howard Grobstein Liquidating	Represented By James Cornell Behrens